



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/518,742

07/26/2005

Ulrike Wachendorff-Neumann

2400.0250001/LVC

3030

26111

7590

12/02/2009

STERNE, KESSLER, GOLDSTEIN & FOX P.L.L.C.
1100 NEW YORK AVENUE, N.W.
WASHINGTON, DC 20005

EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1615

MAIL DATE

DELIVERY MODE

12/02/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/518,742	Applicant(s) WACHENDORFF-NEUMANN ET AL.	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 August 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 6-19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 6-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>8/31/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Voluminous references are considered as they would be in a standard office key word search.

112 rejection is withdrawn in view of amendment ; so is the Fischer rejection, & the double patenting rejections in consideration of applicant's arguments of 8/31/09.

Claim Rejections - 35 USC § 103

Claims 6-19 stand rejected under 35 U.S.C. 103(a) as being unpatentable over ZIMMERMAN-7179824

.ZIMMERMAN presents compounds & compositions (col. 29,30)to control insects & with the instant methods of application (col. 35) in combination with additional fungicides(col. 32, Lines 44-57), inclusive of prothioconazole & trifloxystrobin(col. 33, llines 41,45) .

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize combination pest control means, modified as desired to increase the range of toxicity to include fungus along with insect control.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective

Art Unit: 1615

parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular species and application method of interest, reduction of toxicity, cost minimization, enhanced, and prolonged, or synergistic effects.

As the instant application requires one to perform experimentation to determine synergy, it would likewise be obvious to the peruser of ZIMMERMAN to test the combinations as indicated to optimize that combination of greatest efficacy for the immediate pest and treatment loci or plant of concern. These added compounds only improve the general character and effects of the ZIMMERMAN compositions, and of the instant if inclusive of the ZIMMERMAN formula I compound, as so indicated at column 32, lines 44-57 to extend the spectrum of utility.

Claims 6-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over ISENRING et. al. (United States Patent 6,407,100), JAUTELAT et al (US Patent 5,789,430)

These references teach the compounds trifloxystrobin, prothioconazole as antimicrobial agents, which embraces Applicant's claimed invention.

ISENRING teaches trifloxystrobin as fungicide. See the entire document especially lines 10-20 in column 1, lines 34-67 in column 6, abstract, and examples. See Example 24, Table 2 and formulation F1 of methylpyrrolidone solvent and non-ionic surfactant; the instant trifloxystrobin antifungal and carriers, to treat plants (example B2-B7).

JAUTELAT teaches prothioconazole and tebuconazoles as microbicides.

See the entire document especially example 1 in column 35, lines 27-64 in column 29, lines 1-55 in column 30 and Table 1 in column 14. : see Example 1, tautomer of prothioconazole, as antifungal in carriers of ISENRING & the instant, at Example E

See column 31, 32 mixing and adjuvants with other fungicides is presented. Application is at the instant level (column 34, lines 27-60) and determinable by artisan. One would expect an enhanced effect by application of two fungicides, an increased range of fungi species controlled and/or a decreased concentration of one or both fungicides. One would be able to determine the ratio of the two fungicides, as exemplified by each reference, by simple testing with expectation of success in identifying optimal ratio to control the fungus desired.

Instant claims differ from the reference in claiming the combination of both known compounds useful as antimicrobial and antifungal agents.

It would have been obvious to one skilled in the art at the time of invention was made to combine known compounds for the same purpose in expectation to get a better activity. Since all the above cited reference teach the active compounds as claimed it is prima facie obvious to combine two or more compositions each of which is taught by the prior art to be useful for the same purpose in order to form a new composition that is to be used for the very same

Art Unit: 1615

purpose; the idea of combining them flows logically from their having been individually taught in the prior art. In re Kerkhoven, 205 USPQ 1069.

Claims 6-19 STAND rejected under 35 U.S.C. 103(a) as being unpatentable over BERGER et al US2004/0209923

Plants are protected with mixes of actives [0001] applied to plant parts and soil [0028]. Formulations are shown to include surfactants [0255-0257] and the instant fungicides-one or more [0259]. Seed coatings are shown-1.75-0.15% active.

See claim 22.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize combination pest control means, to use BERGER modified as desired to increase the range of toxicity to include fungus along with insect control.

Applicant's arguments filed 8/31/09 have been fully considered but they are not persuasive. applicant argues the intermediate language precludes other compounds; it does not, because the primary compound of each reference does not interfere with the pesticidal functions of the instant claim; they add to them

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM EST..

Art Unit: 1615

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ROBERT A. WAX can be reached on 571-272-0623. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/NEIL LEVY/
Primary Examiner, Art Unit 1615

11/20/09